

REMARKS

This responds to the Office Action mailed on January 11, 2006, and the references cited therewith.

Claims 4-7, 10-11 and 13-14 are amended; as a result, claims 1-32 are now pending in this application.

Response to Restriction Requirement

Applicant has reviewed the Restriction Requirement mailed October 21, 2003, wherein the Examiner restricted the claims to one of the following inventions under 35 U.S.C. 121:

- I. Claims 1-30, drawn to packaging (for cosmetics), classified in class 206, subclass 581.
- II. Claims 31 and 32, drawn to a method of using a packaging (for cosmetics), classified in class 53, subclass unknown.

Applicant provisionally elects, without traverse, the claims of Group I (claims 1-30). Applicant elects Species III, as shown in Figs. 3-6 and 24-26. Claims 4, 5, 6, 7, 8, 9, 10, 11, 13 and 14 read on Species III, as shown in Figures 3-6 and 24-26. Applicant reserves the right to file divisional application(s) on the non-elected claims if they are not allowed into the present application

§112 Rejection of the Claims

Claims 4-10 were rejected under 35 U.S.C. § 112, second paragraph, for indefiniteness.

The Applicant has amended claim 4 to be an independent claim. The Applicant has amended claims 5-7 to depend from claim 4.

The Applicant has amended claim 10 to cancel reference to “some” means.

The Applicant has amended claim 11 to refer to a “first wall” and a “second wall” and to cancel reference to “the other wall” and “the opposite wall.”

The Applicant has amended claim 13 to depend from claim 11 only. Claim 12 has been withdrawn.

The Applicant has amended claim 14 to cancel reference to “roughly” and the phrase “and any rib that is applied on, or by, radially external wall of the container.”

It is believed that these amendments address objections raised by the Examiner. It is respectfully requested that the Examiner reconsider and withdraw the rejection.

§ 102 Rejection of the Claims

Claim 10 was rejected under 35 U.S.C. § 102(b) for anticipation by Crooks (U.S. Patent No. 4,906,118).

Claims 11, 13 and 14 were rejected under 35 U.S.C. § 102(a, b) for anticipation by WO 93/36985.

Claims 11, 13 and 14 were rejected under 35 U.S.C. § 102(a, b) for anticipation by Williams (U.S. Patent No. 3,117,691).

The Crooks Patent Does Not Anticipate Claim 10

The Examiner has rejected claim 10 as being anticipated by the Crooks patent, 4,906,118. In order to anticipate a claim, a reference must include each and every element in a claim. The Crook patent does not disclose the following features of claim 10, which depend from claim 4:

sealing wall (15) comprising a flexible wall elastically deformable by application of a pressure differential;

a side of wall (9, 21) [of cover (6)] facing the [wall of] container (3, 29) that is provided with radial rib (23) whose radial extent is greater than the distance between the [two] walls; and

hermetically seal[ing of] the [internal compartment] opening (7) of the packaging.

As a consequence, the Crooks patent does not anticipate claim 10.

The WO 93/36985 Reference Does Not Anticipate Claims 11, 13 and 14

The Examiner has rejected claims 11, 13 and 14 as being anticipated by WO 93/36985 ('985). What is claimed in claim 11 is an "annular rib (19) having a radial extent in the direction of the [other] second wall (15, 9) which is greater than d, [in such a way as to] he rib 19 being elastically deformable by application of a pressure differential,

exerting on the [opposite] second wall (15, 9) a radial force ensuring temporary hermetic sealing of sealed compartment (12) of the packaging." However, what is shown at 132 in FIG. 14 is an "apex" formed by faces which "are both oblique to the inner surface 136 of the skirt portion 134.." Page 15, lines 25-30. The '985 reference does not describe the apex as "ensuring temporary hermetic sealing of sealed compartment (12) of the packaging," as is claimed. Instead, the "coengaging" depends upon a "bead 142" that is "received in the undercut surface 140 in order to effect the desired retention." Page 16, lines 1-5. The '985 reference does not describe a hermetic seal but merely describes "coengaging." Even this "coengaging" requires a "bead" and an "undercut surface 140." Thus, the '985 reference does not anticipate claim 11.

Because claims 13 and 14 depend from claim 11 and have the same hermetic seal discussed, these claims are not anticipated by the '985 reference either.

The Williams Patent 3,117,691 ('691) Does Not Anticipate Claims 11, 13 and 14

Claim 11 claims a "sealed packaging for cosmetic or pharmaceutical compositions." However, the device shown in the '691 patent is used to store "rolls of absorbent material containing liquid chemical, such as are supplied with some types of photographic film." Col. 1, lines 14-16.

Claim 11 also includes the following features: "a sealed compartment (12) defined by container (1) and fitted cover (3), [characterized by] comprising radial first and second walls that are arranged a distance d apart from one another; wherein the first [one of these] wall[s] (9, 15) is provided with annular rib (19) having a radial extent in the direction of the [other] second wall (15, 9) which is greater than d, [in such a way as to] the rib 19 being elastically deformable by

application of a pressure differential, exerting on the [opposite] second wall (15, 9) a radial force ensuring temporary hermetic sealing of sealed compartment (12) of the packaging.”

The ‘691 patent does not describe a “rib 19 being elastically deformable by application of a pressure differential, exerting on the [opposite] second wall (15, 9) a radial force ensuring temporary hermetic sealing of sealed compartment (12) of the packaging.” Instead, Williams describes a “long sloping surface 17” and a “bead 14” and a “recess 18” that must work together to form a seal. The “long sloping surface 17” is not described as being “elastically deformable by application of a pressure differential.” Thus, the ‘691 patent does not anticipate claim 11.

Because claims 13 and 14 depend from claim 11 and have the same hermetic seal discussed, these claims are not anticipated by the ‘691 reference either.

The Applicant respectfully requests that the Examiner withdraw rejection of claims 4-11, 13 and 15 and allow the claims.

CONCLUSION

Applicant respectfully submits that the claims are in condition for allowance, and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney at (612) 373-6976 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

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CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being filed using the USPTO's electronic filing system EFS-Web, and is addressed to: Mail Stop Amendment, Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on this 11th day of July 2006.

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